

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 90570-001

v

Blue Cross Blue Shield of Michigan  
Respondent

/

Issued and entered  
this 22nd day of December 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On September 8, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on September 15, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on October 9, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## **II FACTUAL BACKGROUND**

On December 5, 2006, the Petitioner purchased a custom-made SaeboFlex Dynamic Hand Splint (a wrist hand finger orthotic) from Saebo, Inc., the manufacturer. The charge was \$1,690.00. BCBSM denied payment because the device did not meet the requisite benefit criteria.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on July 29, 2008, and issued a final adverse determination dated August 1, 2008.

## **III ISSUE**

Did BCBSM correctly deny coverage for the Petitioner's SaeboFlex orthotic device?

## **IV ANALYSIS**

### **Petitioner's Argument**

The Petitioner purchased the SaeboFlex device because it was prescribed by his physician as medically necessary to help him recover from a stroke. The Petitioner says the device is not investigational, experimental, or a life style choice, and is only available from Saebo, Inc., because it has a patent on it and is not sold through other durable medical equipment providers. The Petitioner says he could not have purchased this device from any other provider.

The Petitioner argues that the SaeboFlex was medically necessary to treat his condition and a covered benefit under his certificate. He believes that BCBSM is required to pay for it.

### **BCBSM's Argument**

BCBSM says that under the terms of the certificate, orthotic devices are not covered unless they are furnished by a provider that is fully accredited or (with BCBSM approval) conditionally accredited by the American Board for Certification in Orthotics and Prosthetics (ABC). The suppliers may include MD's, DO's, DPM's, prosthetists, and orthotists who meet the BCBSM qualification standards.

In the Petitioner's case, he purchased his orthotic from Saebo, Inc., which is also the manufacturer. However, Saebo, Inc., is not a fully accredited provider, nor is it accredited by the ABC.

Furthermore, BCBSM's medical consultant reviewed the documentation and determined that the use of the SaeboFlex orthosis is considered to be investigational, i.e., its effectiveness has not been established. BCBSM says there is a lack of medical literature demonstrating that the SaeboFlex device is able to provide results as good as or better than those obtained from a standard orthotic.

BCBSM argues that the Petitioner's SaeboFlex device is not a covered benefit under the certificate and BCBSM is not required to pay for it.

#### Commissioner's Review

On page 5.6 of the certificate, under "Prosthetic and Orthotic Devices", are these coverage guidelines:

"To be covered, custom-made devices must be furnished by a provider that is fully accredited, or with BCBSM approval, conditionally accredited by the American Board for Certification in Orthotics and Prosthetics, Inc (ABC). \* \* \*

Prosthetic and orthotic suppliers may include MDs, DOs, DPMs, prosthetists and orthotists who meet BCBSM qualification standards."

BCBSM says that the provider, Saebo, Inc., is not accredited by ABC and has not met BCBSM's qualifying standards and there is nothing in the record to the contrary. Therefore, the Commissioner finds that the custom-made device provided to the Petitioner by Saebo, Inc., is not a covered benefit under the terms of the certificate, and BCBSM is not required to pay for it.

By upholding BCBSM on the basis of the certificate's terms, the Commissioner does not need to address BCBSM's alternate argument that the SaeboFlex device is investigational for the treatment of the Petitioner's condition.

**V  
ORDER**

BCBSM's final adverse determination of August 1, 2008, is upheld. BCBSM is not required to cover the Petitioner's SaeboFlex device.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.